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May 15, 2020

VIA ELECTRONIC SUBMISSION

Hon. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Rule, *Position Limits for Derivatives*, RIN 3038-AD99

Dear Secretary Kirkpatrick:

I. INTRODUCTION.

Chevron U.S.A. Inc. ("**Chevron**"), hereby submits this letter in response to the request for public comment set forth in the Commodity Futures Trading Commission's (the "**CFTC**" or "**Commission**") Proposed Rule, *Position Limits for Derivatives* (the "**PL NOPR**") published in the *Federal Register* on February 27, 2020,[1] which proposes to establish federal speculative position limits for certain physical commodity derivative transactions pursuant to Commodity Exchange Act ("**CEA**") Section 4a(a),[2] as amended by Section 737 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**" or the "**Dodd-Frank Act**").[3]

Chevron's Supply and Trading business unit – which transacts through Chevron U.S.A. Inc. and its various divisions – provides a critical link between the market and Chevron's upstream, downstream, and chemicals companies, providing commercial support to crude oil and natural gas production operations and to Chevron U.S.A. Inc.'s refining network. Chevron Supply and Trading supports efforts to ensure market integrity and the implementation of an appropriately-tailored framework for federal speculative position limits. Chevron Supply and Trading has constructively engaged with staff in the Chairman and Commissioners' offices, staff in the Division of Market Oversight ("**DMO**"), and various industry groups in efforts to facilitate the development of a federal regime for speculative position limits that meets the Commission's statutory obligations under CEA Section 4a(a) to prevent excessive speculation in commodity derivatives markets while avoiding harm to legitimate commercial hedging activities.

Chevron respectfully requests for the Commission to consider the comments provided herein and urges the Commission to bring this rulemaking proceeding to an ultimate conclusion through the issuance of a final rule as soon as possible.

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[1] Proposed Rule, *Position Limits for Derivatives*, 85 Fed. Reg. 11,596 (Feb. 27, 2020). Chevron Supply and Trading and Chevron U.S.A. Inc. are collectively referred to herein as "**Chevron.**"

[2] 7 U.S.C. § 6a(a).

[3] H.R. 4173, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

II. COMMENTS OF CHEVRON.

A. The PL NOPR Is a Significant Improvement Over Previous Iterations of This Rulemaking and Approaches the Commission's Goal of Preventing Excessive Speculation Without Harming Commercial Hedging Activity.

The PL NOPR takes a substantial step forward, both structurally and substantively, over the Commission's prior rulemaking proposals to ensure the Commission meets its statutory obligations under CEA Section 4a(a) to reduce or prevent excessive speculation and, at the same time, allowing commercial firms to effectively manage their exposure to price risk.[4] These obligations are protected through an array of safeguards, including the enforcement of Commission rules and regulations, requirements placed on the Exchanges by the PL NOPR, the Exchanges' own self-interests and extensive expertise in operating fair, orderly, and efficient markets, and effective Commission oversight.

The following features in the PL NOPR are examples of the Commission crafting fair and balanced position limit regulations:

- Delegating substantial authority to the Exchanges to implement and administer many important and nuanced aspects of the new federal regime for speculative position limits, including the administration of exemptions for certain "bona fide hedging transactions or positions" ("**BFH**") therefrom, subject to Commission oversight;

- Limiting the federal regime to spot month speculative limits in markets for energy commodity derivatives;

- Delegating authority to the Exchanges to impose accountability levels for non-spot months in energy markets;

- Recognizing more appropriate, updated deliverable supply estimates for purposes of establishing federal speculative position limits;

- Developing a workable definition of "economically equivalent swap";

- Expressly withdrawing the novel, overly narrow, and restrictive interpretation of the BFH definition proposed in the Prior Releases;

- Clarifying and adopting a commercially-practicable interpretation of the definition of BFH and issuing new guidance on the use of gross hedging that will allow hedgers to continue to use their discretion and business judgment to effectively identify and manage their exposures to price risk in physical commodity markets;

- Adopting an expanded list of enumerated hedge exemptions (each, an "**Enumerated BFH**"), including Anticipated Merchandising, and permitting a number of the proposed Enumerated BFHs to be utilized on a cross-commodity basis;

- Including a dual track process for commercial firms to pursue BFH exemptions that do not fall within any of the Enumerated BFHs set forth in the PL NOPR (each, a "**Non-Enumerated BFH**") that permits commercial firms to apply for such exemptions (i) directly to the Commission, or (ii) using a streamlined process administered by the Exchanges;

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[4] *See* Reproposal, *Position Limits for Derivatives*, 81 Fed. Reg. 96,704 (Dec. 30, 2016) ("**Reproposal**"); Supplemental Notice of Proposed Rulemaking, *Position Limits for Derivatives: Certain Exemptions and Guidance*, 81 Fed. Reg. 38,458 (June 13, 2016) ("**Supplemental Proposal**"); Notice of Proposed Rulemaking, *Position Limits for Derivatives*, 78 Fed. Reg. 75,680 (Dec. 12, 2013) ("**December 2013 Proposal**") (collectively, the "**Prior Releases**"). The Commission issued the PL NOPR as a new proposal and, in doing so, has expressly withdrawn the Prior Releases from further consideration. PL NOPR at 11,597.

- Eliminating from federal position limits the prohibition on the ability to hold a physically-settled Referenced Contract as a BFH during the last five days of trading (or during the time period for the spot month if less than five days) ("**Five Day Rule**");

- Including a BFH exemption for offsets of pass-through swap positions that qualify for treatment as BFHs;

- Including an exemption from applicable federal speculative position limits for certain enumerated spread transactions and for persons under financial distress;

- Excluding trade options from the Referenced Contract definition, and providing BFH treatment for Referenced Contracts that hedge trade options;

- Striking regulations such as CFTC Regulation 1.48 that required administrative process before a commercial firm might use certain anticipatory BFHs; and

- Eliminating monthly reporting of cash-market positions under Form 204 and the Series '04 Form reporting requirements applicable to BFH activity proposed in the Prior Releases.

Based on the foregoing, the PL NOPR proposes a workable regulatory framework for a new and expanded federal position limits regime, as contemplated by Dodd-Frank. Subject to comments set forth herein, Chevron believes this framework approaches a workable balance of meeting the CFTC's statutory obligations to prevent excessive speculation under CEA Section 4a(a) and avoid harm to legitimate commercial hedging activities. Given the environment in which the PL NOPR is being considered, the Commission can help reassure that markets for energy commodities will remain liquid and robust by providing the certainty of a final rule regarding federal speculative position limits based on this foundation.

B. Limited and Specific Recommendations Intended to Ensure the Ability of Commercial Firms to Effectively Manage Risk.

The comments submitted herein are limited in scope and specific. They are provided with the goal of constructively helping the Commission ultimately strike the balance referenced above by ensuring the federal regime provides commercial hedgers with the flexibility needed to effectively identify and hedge their exposures to price risk in the supply chain. By doing so, commercial hedgers will be better able to reduce risk and volatility as well as potentially the costs of physical commodities delivered to others that include end-use consumers at both corporate and retail levels.

1. Treatment of "Bona Fide Hedging Transactions or Positions."

As a commercial hedger with a large, complex physical energy portfolio, Chevron must take into account various important and unique considerations when hedging its exposures to price risk. Location, product, and timing characteristics all factor into the evaluation of risk, as do applicable corporate structures, hedging objectives, and each of these subjectively evaluate risks differently. Importantly, the Commission's clarified view of BFH activity does not involve the adoption of a "one-size-fits-all" approach to commodity risk management that substitutes pre-determined Commission limitations for discretion and business judgment of commercial firms. Instead, it provides commercial hedgers with flexibility to identify their risk exposures in physical commodity markets, value them, and manage such exposures in accordance with their risk appetite and business objectives, whether at the level of aggregated affiliates, legal entity, desk, book, asset, or other level.

a. Commercial Hedgers Should Be Permitted to Utilize Gross Hedging for Enumerated and Non-Enumerated Bona Fide Hedging Activities.

Through the adoption of Appendix B, paragraph (a) of proposed Part 150, the PL NOPR appropriately recognizes that gross hedges should qualify for BFH treatment in circumstances where net cash positions do not necessarily measure total risk exposure due to differences in the timing of cash commitments, the location of stocks, and differences in grades or types of cash commodity. Further, the PL NOPR also recognizes that large complex entities, such as Chevron, may have hedging needs that are not met solely through the use of gross or net hedging.[5]

Gross hedging is utilized by many commercial hedgers in energy markets as a standard practice for managing their exposure to price risk under the existing Exchange regimes for position limits. To ensure that these entities are able to continue to utilize gross hedging practices as part of their routine BFH activities when compliance with the proposed federal regime is required, the Commission should revise the gross hedging guidance set forth in Appendix B, paragraph (a)(1) to expressly clarify that gross hedging is permissible when using both Enumerated BFHs and Non-Enumerated BFHs.

Although the PL NOPR does not offer any discussion as to why gross hedging would not be permissible when utilizing an Enumerated BFH, Chevron is concerned that the discussion in the preamble text and language of paragraph (a)(1)(D) of the Appendix B guidance addressing use of gross hedging contemplates that such hedging activity could be limited to Non-Enumerated BFHs. In relevant part, the preamble text states as follows:

> The Commission continues to believe that a gross hedge may be a bona fide hedge in circumstances where net cash positions do not necessarily measure total risk exposure due to differences in the timing of cash commitments, the location of stocks, and differences in grades or types of cash commodity. However, the Commission clarifies that these may not be the only circumstances in which gross hedging may be recognized as bona fide. Like the analysis of whether a particular position satisfies the proposed bona fide hedge definition, *the analysis of whether gross hedging may be utilized would involve a case-by case determination by the Commission and/or by an exchange using its expertise and knowledge of its participants as it considers applications under § 150.9, subject to Commission review and oversight*.
>
> (Emphasis added).[6]

Further, the guidance in Appendix B, paragraph (a)(1) is set up as a four-part conjunctive test, and states as follows:

> (A) The manner in which the person measures risk is consistent over time with and follows a person's regular historical practice for that person;
>
> (B) The person is not measuring risk on gross basis to evade federal position limits set forth in § 150.2 or the aggregation rules in § 150.4;
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> (C) The person is able to demonstrate compliance with paragraphs (A) and (B) upon request of the Commission and/or of designated contract market, including by providing information regarding the entities with which the person aggregates positions; and
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> (D) A designated contract market or swap execution facility that recognizes a particular gross hedging position as bona fide pursuant to § 150.9 documents the justification for doing so, and maintains records of such justifications in accordance with § 150.9(d).

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[5] PL NOPR at 11,613.

[6] PL NOPR at 11,613.

The express reference to proposed Regulation 150.9 in Appendix B, paragraph (a)(1) could be read as effectively prohibiting such firms from using gross hedging under the proposed federal regime unless they were able to obtain a Non-Enumerated BFH for such activity.

Chevron is concerned that if commercial hedgers are limited to using gross hedging in this manner, it would substantially undermine the Commission's efforts to provide commercial hedgers with additional flexibility to manage their risk exposures in an efficient and less burdensome manner through an expanded list of Enumerated BFHs. In addition, it will likely result in a large number of commercial hedgers being forced to seek Non-Enumerated BFHs for what they perceive as standard day-to-day hedging practices, which would be contrary to the Commission's expectations that the Non-Enumerated BFH process would be utilized only in "rare and exceptional" circumstances.[7]

For example, an entity could be importing an Arabian Heavy crude grade cargo to run in a refinery in which case that cargo would be hedged on a gross basis due to timing issues. Typically, waterborne cargoes are priced around bill of lading date so the timing would not be appropriate from a risk management perspective to net out with other exposures. The various transportation methods used in physical energy products necessitate the need to utilize both gross and net hedging to manage price risk (*e.g.*, truck, rail, pipeline, ship). The following demonstrates this point:

> *Company A has a U.S. Gulf Coast refinery, which is configured to run a mixed crude slate. Company A is presented with a discrete opportunity by a third-party company to purchase a Latin America crude oil cargo to run in its Gulf Coast refinery. The contractual pricing dates used to determine the purchase price of the cargo are based on the bill of lading date (i.e., the five calendar days around the date on which the cargo is loaded onboard the delivering vessel and the bill of lading is issued, with the bill of lading date being the third of the five calendar pricing days). The contractual pricing dates could fall within, outside, or partially overlap the spot month. Due to timing issues, this cargo would be hedged by Company A on a gross basis in circumstances where it would not be appropriate from a risk management perspective to net out with other exposures in Company A's portfolio. The variety of methods used in transporting physical energy products – and operational issues which may arise relating thereto – necessitate companies to utilize both gross and net hedging to manage price risk.*

If it is the Commission's intent to allow commercial firms to use gross hedging when managing exposures covered by Non-Enumerated BFHs and/or Enumerated BFHs, any final rule issued in this proceeding should remove paragraph (a)(1)(D) from the Appendix B gross hedging guidance and expressly clarify that commercial hedgers have the flexibility and discretion to use gross hedging for Enumerated or Non-Enumerated BFHs so long as the other conditions of paragraph (a)(1) are met.

b. The Commission Should Clarify That Integrated Energy Companies Routinely Engaged in Merchandising Activities May Utilize Enumerated BFH for Anticipated Merchandising.

Chevron supports the adoption of an Enumerated BFH for Anticipated Merchandising in paragraph (a)(11) of Appendix A of proposed Part 150. Merchandising, whether conducted by physical commodity merchants, supply chain logistic companies, integrated energy companies, or other commercial firms, plays a critical role in the physical supply chain in every commodity market, linking producers to processors and processors to wholesalers and consumers.[8] Chevron and its affiliates own, lease, operate, and otherwise control assets that facilitate the production, movement, storage, and processing of physical energy commodities on a global scale. These include vessels, barges, train cars, tanker trucks, pipelines, storage, and terminal facilities as well as the employees and expertise to manage such infrastructure and operations.

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7 PL NOPR at 11,650.

8 PL NOPR at 11,611.

The proposed language of the Enumerated BFH for Anticipated Merchandising, if strictly construed, might appear to foreclose Chevron and other commercial hedgers from utilizing this enumerated hedge exemption from federal position limits. In this respect, the Enumerated BFH for Anticipated Merchandising specifically refers to entities that are "merchants," which is undefined. Chevron respectfully submits that this hedge exemption should also apply to any commercial firm engaged in the business of merchandising that can demonstrate the ability to make and take physical delivery of physical commodities as well as to store and move the underlying commodity.

Chevron appreciates the diverse set of Enumerated BFHs available to integrated energy companies and other commercial firms that can be utilized to facilitate the commercial hedging needs of various aspects of their business, such as upstream and downstream operations. However, Chevron wants to ensure that the Commission does not overlook the ability of these entities to seek relief from federal position limits through the Enumerated BFH for Anticipated Merchandising.

For example, integrated energy companies may have a functional business unit or a stand-alone, affiliated entity that, as part of its operations, acts as a middleman in markets for energy commodities for purposes of purchasing, selling, storing, and physically taking or making delivery of energy commodities for purposes of optimizing assets owned, leased, operated, or otherwise controlled by other affiliated entities or functional business units ("**Mid-Market Trading Units**"). In this respect, such Mid-Market Trading Units effectively function in the same manner as physical commodity merchants or supply chain logistic companies by maintaining commercial relationships with unaffiliated third-parties for purposes of engaging in merchandising transactions to facilitate third-party purchase and sales for their own account. Chevron offers the following example to demonstrate this point:

> *Company A has a U.S. refining system – which produces a variety of oil products including jet fuel – and a functional business unit engaged in the marketing of jet fuel to third-party customers. Company A's refinery system primarily supplies the jet fuel it produces to domestic markets but, on occasion, market dynamics necessitate that some parcels of the jet fuel move out of the region to international markets. In view of this, the functional business unit enters into a term contract to supply a specified quantity of jet fuel to a third-party customer based in South America. The third-party customer's jet fuel requirement – and in turn the specified contract quantity – is more than can be supplied using only available cargoes produced by Company A's refinery. The functional business unit, therefore, is required to purchase additional cargoes of jet fuel from other third parties in order to fulfil its contractual obligations.*

Without the ability to utilize the Enumerated BFH for Anticipated Merchandising, Company A in the example above would be required to seek a Non-Enumerated BFH directly from the Commission pursuant to proposed Regulation 150.3 or an Exchange pursuant to proposed Regulation 150.9 to put on anticipated merchandising hedge positions above applicable federal position limits. *Such a limitation would have the unintended consequence of competitively disadvantaging commercial energy firms who engage in the merchandising of physical c*ommodities to entities that would be permitted to utilize this enumerated exemption on the terms proposed. Chevron does not believe that this is the Commission's intent. Further, given the lack of certainty and timing concerns associated with the proposed Non-Enumerated BFH process, it would also potentially inject additional risk into the energy supply chain. Increased risk will result in increased costs, which will ultimately be borne by consumers of energy commodities.

In light of these concerns, the Commission should either (i) clarify and define the term "merchant," as set forth in Appendix A, paragraph (a)(11) to include any commercial hedger that engages in the business of merchandising and has a demonstrated history of buying and selling the underlying commodity for its merchandising business or (ii) revise the text of paragraph (a)(11)(B) as follows:

> (11) *Hedges of anticipated merchandising.* Long or short positions in commodity derivative contracts that offset the anticipated change in value of the underlying commodity that a person anticipates purchasing or selling, *provided that*:

. . . .

(B) The person ~~is a merchant~~ handling the underlying commodity that is subject to the anticipatory merchandising hedge **is a producer, processor, commercial user, or a merchant engaged in merchandising (a "Commercial Entity")**, and that ~~such merchant~~ **such Commercial Entity** is entering into the position solely for purposes related to its merchandising business and has a demonstrated history of buying**,** ~~and~~ selling**, or using** the underlying commodity for its merchandising business.

c. The Commission Should Clarify That the Enumerated BFHs for Anticipated Unfilled Requirements and Anticipated Merchandising May Be Utilized as Cross-Commodity Hedges.

As noted in Section II.A, above, Chevron supports the adoption of Appendix A, paragraph (a)(5) which permits commercial hedges to utilize a large number of the proposed Enumerated BFHs as cross-commodity hedges.[9] However, Chevron believes that the PL NOPR's failure to expressly include the Enumerated BFHs for Unfilled Anticipated Requirements and Anticipated Merchandising will harm legitimate commercial hedging activity, particularly for commercial firms with large, complicated energy commodity portfolios.[10]

Although PL NOPR does not provide any supporting policy basis or substantive discussion for omitting the Enumerated BFHs for Unfilled Anticipated Requirements and Anticipated Merchandising from Appendix A, paragraph (a)(5), Chevron highlights an internal inconsistency in the PL NOPR created by the Commission's preliminarily determination that Request No. 10 set forth in the Working Group of Commercial Energy Firms, *Petition for Commission Order Granting Exemptive Relief for Certain Bona Fide Hedging Transactions under Section 4a(a)(7) of the Commodity Exchange Act* (Jan. 20, 2012) ("**BFH Petition**") would potentially fit in paragraph (a)(5) of the Appendix A, if applicable requirements are met. Request No. 10 of the BFH Petition involves holding a cross-commodity hedge using a physically-settled Referenced Contract to meet unfilled anticipated requirements.[11]

Chevron supports the Commission's preliminary determination with respect to Request No. 10 that such hedging activity would qualify for BFH treatment as a cross-commodity hedge of unfilled anticipated requirements. For commercial energy firms transacting in cash markets for crude oil or refined products, it is industry-standard practice to use commodity derivatives contracts, including physical-delivery futures contracts (*i.e.,* physically-settled Referenced Contracts), to hedge their anticipated requirements for a particular underlying commodity on a cross-commodity basis.

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[9] Specifically, pursuant to paragraph (a)(5) in Appendix A of proposed Part 150, a market participant may utilize the following Enumerated BFHs listed in Appendix A on a cross-commodity basis: (i) hedges of unsold anticipated production; (ii) hedges of offsetting unfixed-price cash commodity sales and purchases; (iii) hedges of anticipated mineral royalties; (iv) hedges of anticipated services; (v) hedges of inventory and cash commodity fixed-price purchase contracts; (vi) hedges of cash commodity fixed-price sales contracts; (vii) hedges by agents; and (viii) offsets of commodity trade options.

[10] The Enumerated BFH for Unfilled Anticipated Requirements and Anticipated Merchandising are respectively set forth in Appendix A, paragraphs (a)(10) and (a)(11).

[11] PL NOPR at 11,612.

Request No. 10 of the BFH Petition involves a commercial energy firm that blends gasoline and will purchase various gasoline blendstocks, such as Alkylate, Reformate, Naphtha, etc., to produce and sell finished gasoline.[12] Under Request No. 10, the commercial energy firm has exposure to the risk that the price of these blendstocks will rise before they are purchased. Because there are no liquid cash-settled commodity derivative contracts in the same underlying commodity, it uses the NYMEX RBOB Gasoline (RB) futures contract, a physically-delivered futures contract to hedge this risk. Similarly, for many refined products, the NYMEX HO contract is used as an industry-standard hedge for various grades and specifications of diesel, fuel oil, and jet fuel where there is not a commodity derivative contract in the respective underlying commodity and the NYMEX HO contract is viewed as the most economically-appropriate futures contract available. Another example could include a situation in which a commercial energy firm sells jet fuel to a customer and uses the NYMEX HO contract to hedge this exposure with a Jet/ULSD differential swap contract.

It is also a standard practice of many U.S. refiners to hedge their unfilled anticipated requirements for crude feedstock on a cross-commodity basis. For instance, crude grades such as Bonito sour, Heavy Louisiana Sweet, MARS, or Vasconia are used in refinery operations; however, these grades do not have a liquid corresponding futures contract in the same underlying commodity. In such cases, the NYMEX CL contract is viewed as the best available hedge due to (i) the price correlation between this contract and these grades of crude and (ii) the significant liquidity in the NYMEX CL contract market. Chevron offers the following example to demonstrate this point:

> *Company A has a U.S. refining system, which is configured to run a base crude slate of heavy crude oil grades, supplemented by a smaller proportion of light crude oil grades. The refineries comprising Company A's U.S. refining system are, therefore, not able to solely process grades of crude oil deliverable under the NYMEX CL futures contract, whether these are equity barrels or purchased from third parties. In circumstances where Company A wishes to run crude oil grades such as Bonito Sour, Heavy Louisiana Sweet, MARS, or Vasconia in its U.S. refining system, there is no corresponding futures contract available to manage associated price risk. As such, Company A uses its business judgement to determine the NYMEX CL futures contract is the most appropriate hedge because of: (i) the price correlation between the NYMEX CL contract and the grades of crude oil anticipated to be purchased for processing in its U.S. refinery system; and (ii) the substantial liquidity in the market for this futures contract. Consequently, hedges of crude oil grades that Company A anticipates purchasing to meet its refineries' unfilled requirements that are not deliverable under the NYMEX CL futures contract are treated by Company A and the Exchange (e.g., NYMEX) as cross-commodity hedges.*

Chevron recognizes that operational differences exist between various commodity markets, such as how the spot month works for expiring futures contracts in markets for agricultural and energy commodities. While the Commission may have market integrity concerns that could result from participants holding long positions in physically-settled Referenced Contracts in the spot month for agricultural commodities, these concerns do not exist in energy markets. Based on the foregoing, Chevron requests that the Commission revise the express language of Appendix B, paragraph (a)(5) to specifically clarify Enumerated BFHs for Unfilled Anticipated Requirements and Anticipated Merchandising may be utilized as cross-commodity hedges in energy markets. Chevron offers the following revisions to Appendix A, paragraph (a)(5) for the Commission's consideration:

[12] The Commercial Energy Working Group's BFH Petition can be found at: http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/wgbfhpetition012012.pdf.

(5) *Cross-commodity hedges*. Positions in commodity derivative contracts described in paragraph (2) of the bona fide hedging transactions or positions definition in § 150.1 or in paragraphs (a)(1) through (a)(4) and paragraphs (a)(6) through (a)(~~9~~ **11**) of this appendix A may also be used to offset the risks arising from a commodity other than the cash commodity underlying a commodity derivative contract, provided that the fluctuations in value of the position in the commodity derivative contract, or the commodity underlying the commodity derivative contract, shall be substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through swap, **with the exception of positions in legacy and other agricultural core referenced futures contracts identified in Table 1 to paragraph (d) of §150.2 under paragraphs (a)(10) and (a)(11)**.

d. The Commission Should Clarify That Certain Commonly-Utilized, Industry-Standard Risk Reducing Practices Fall within the Proposed Enumerated BFH for Anticipated Merchandising.

The proposed adoption of the Enumerated BFH for Anticipated Merchandising set forth in Appendix A, paragraph (a)(11) of proposed Part 150 is a significant step forward to ensure the proposed federal position limits regime does not harm legitimate commercial hedging activity in energy markets. However, the PL NOPR fails to recognize certain industry-standard, commonly utilized hedges of merchandising activity as falling within the Enumerated BFH for Anticipated Merchandising in Appendix A, paragraph (a)(11) to proposed Part 150. For the reasons discussed below, Chevron requests that any final rule issued in this proceeding clarify that commercial hedgers that meet the applicable conditions may utilize the Enumerated BFH for Anticipated Merchandising when managing price risk associated with these exposures.

Requiring commercial hedgers to pursue Non-Enumerated BFHs from the Exchanges pursuant to proposed Regulation 150.9 or directly from the Commission pursuant to proposed Regulation 150.3 for the commonly-utilized, industry standard risk-reducing practices discussed below will inject uncertainty and impose additional costs to commercial hedging activities in energy markets. Moreover, if an enumerated exemption for these activities is not available, it is foreseeable that the Exchanges and the Commission will be overwhelmed with Non-Enumerated BFH applications, which would be contrary to the expectation articulated in the PL NOPR that the non-enumerated process would be used only in "rare and exceptional" circumstances.

(i). Storage Hedges and Hedges of Assets Owned or to Be Owned.

Energy storage is a critical, highly-valuable energy infrastructure asset, which has been reflected by recent market events, including the negative pricing of the NYMEX CL contract. Storage hedges represent legitimate and fundamental risk reducing activities of commercial enterprises that are frequently-utilized across all sectors of the energy industry. A wide array of commercial energy firms from each sector of the energy industry, including multinational energy companies, such as Chevron, as well as independent refiners, physical commodity merchants, supply chain logistic companies, power generators, regulated electric utilities, local natural gas distribution companies, and power producers rely on storage hedges.

Chevron is concerned that the failure of the PL NOPR to clarify that commercial hedgers may utilize the proposed Enumerated BFH for Anticipated Merchandising for storage hedges, particularly hedges of anticipated storage, will harm commercial hedging in the energy sector. This concern is elevated by the fact that, given the pervasive use of storage hedges by entities throughout the physical supply chain and the Commission's clarified approach to BFH activities, the PL NOPR fails to provide for the record any explanation or policy-based justification for such action.

Storage hedges enable commercial hedgers to reduce exposure to price risk with respect to a commodity that is purchased and injected into storage as well as withdrawn and sold to customers, and they also help establish (and lock in) the value of the asset – the storage lease. The ability of a commercial hedger to protect itself from an adverse change in prices that determine an asset's value is clearly contemplated by the language of CEA Section 4a(a)(c)(2)(A)(iii)(1), which directs the Commission to define "*bona fide* hedging transaction or position to include the hedging of the value of assets that a party owns."

The omission of enumerated treatment for storage hedges in the PL NOPR sharply contrasts with the treatment of this activity in the final rule issued by the Commission in November 2011, which was subsequently vacated by federal courts.[13] The Vacated Final Rule included an enumerated hedge exemption that was characterized as anticipated merchandising in then-proposed Part 151 of the CFTC Regulations, but which expressly applied to storage transactions.[14] In relevant part, the Vacated Final Rule stated as follows:

> The Commission recognizes that in some circumstances, such as when a market participant owns or leases an asset in the form of storage capacity, the market participant could establish market positions to reduce the risk associated with returns anticipated from owning or leasing that capacity. In these narrow circumstances, the transactions in question may meet the statutory definition of a bona fide hedging transaction. However, to address Commission concerns about unintended consequences (*e.g.*, creating a potential loophole that may result in granting hedge exemptions for types of speculative activity), the Commission will recognize anticipatory merchandising transactions as a bona fide hedge, provided the following conditions are met: (1) The hedger owns or leases storage capacity; (2) the hedge is no larger than the amount of unfilled storage capacity currently, or the amount of reasonably anticipated unfilled storage capacity during the hedging period; (3) the hedge is in the form of a calendar spread (and utilizing a calendar spread is economically appropriate to the reduction of risk associated with the anticipated merchandising activity) with component contract months that settle in not more than twelve months; and (4) no such position is maintained in any physical-delivery Referenced Contract during the last five days of trading of the Core Referenced Futures Contract for agricultural or metal contracts or during the spot month for other commodities.[15]

Although storage hedges can be static, commercial energy firms often make dynamic decisions about how and when to hedge storage capacity.[16] In addition, storage leases are transferred in a secondary market where their market value is largely determined by the calendar spread at that moment. Not allowing commercial energy firms to utilize these industry-standard hedges on an enumerated basis because they are "anticipatory" in nature or viewed as a form of "merchandising" – or both – could result storage assets being underutilized, which could increase volatility in physical and

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[13] On November 18, 2011, the CFTC issued a final rule establishing federal speculative position limits for 28 exempt and agricultural commodity futures and options contracts and their economically equivalent contracts. *See* Final Rule and Interim Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71,626 (Nov. 18, 2011) ("**Vacated Final Rule**"). On September 28, 2012, the United States District Court for the District of Columbia vacated and remanded this final rule. *See Int'l Swaps and Derivatives Ass'n, et al. v. U.S. Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. Sept. 28, 2012), *appeal dismissed*, 2013 U.S. App. LEXIS 22618 (D.C. Cir. Nov. 6, 2013).

[14] Vacated Final Rule at 71,646.

[15] Vacated Final Rule at 71,646.

[16] These factors include, among others: (i) facility-specific operating characteristics; (ii) weather; (iii) regional storage constraints; (iv) pipeline maintenance; (v) "force majeure" events; and (vi) weekly U.S. Energy Information Administration natural gas storage numbers.

financial markets for energy commodities that ultimately could translate into higher costs for consumers.[17]

Chevron respectfully requests that any final rule issued in this proceeding clarifies that hedges of storage may qualify for the Enumerated BFH for Anticipated Merchandising if applicable conditions are met. In the alternative, Chevron requests the Commission identify and clarify that storage hedges of this nature may qualify for another enumerated exemption, notably the Enumerated BFH for Unfilled Anticipated Requirements.

(ii). Hedges of Calendar Month Average Purchases and Sales.

The use of calendar month average ("**CMA**") pricing structures are favored in a vast amount of commercial transactions entered into by producers to sell, and end-use consumers (including refiners) to purchase, physical crude oil and natural gas. CMA pricing structures are used to (i) establish the spot price based on a differential to the forward price when there is no reliable market-established price and (ii) convert to "trading month average" pricing (*i.e.,* the expiring listed futures contract does not trade through the spot month the calendar month).

Although producers in oil and gas markets could use the Enumerated BFH for Anticipated Production set forth as Appendix A, paragraph (a)(1) of proposed Part 150, to hedge sales of oil or gas to cover production sold using CMA pricing, Chevron notes that firms to whom they might sell such production for resale to others cannot.[18] As a purchaser and reseller of crude oil and natural gas, Chevron is concerned that this constraint will harm the ability of commercial energy firms to hedge against price risk associated with supply chain transactions (i) that utilize this critical pricing structure or (ii) where an actual or potential mismatch in pricing terms exists and hedges using CMA pricing are viewed as the best available practice for mitigating exposure to such risks.

The PL NOPR suggests that a commercial energy firm can seek a Non-Enumerated BFH to hedge merchandising transactions of energy commodities where the underlying transaction uses CMA pricing.[19] However, this statement fails to recognize that CMA pricing of physical oil or gas merchandising transactions is a prevailing, industry-standard practice in oil and gas markets. Simply put, the pricing of physical transactions in oil and gas markets using CMA and related hedges using commodity derivatives is the norm – not the exception. In this respect, clarification that the Enumerated BFH for Anticipated Merchandising by commercial firms – whether merchants or integrated energy companies – that utilize CMA hedges to mitigate their exposure to price risk associated with the purchase of crude oil or natural gas from producers and resale of such product to third parties down the supply chain will eliminate unnecessary barriers for obtaining BFH treatment related to fundamental pricing practice in physical markets for oil and gas.

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[17] In 2013, subsequent to the Vacated Final Rule, the Commission's focus on storage hedges shifted from the use of storage by commercial energy firms to providers of "off-farm" storage and the rents they could collect from operating storage capacity. *See* December 2013 Release at 75,719. This was not the basis upon which the Commission approved an anticipated merchandising hedge for storage in the Vacated Final Rule and should not be the basis on which it is considered in this rulemaking. Given the capital intensive nature of owning a storage facility (*i.e.,* fixed cost of the storage facility and the variable costs for labor and fuel, in addition to other costs such as insurance), commercial energy firms generally are not in the business of acting as third-party lessors of storage. Rather, from a risk management perspective, their focus is on locking in the value of a critical energy infrastructure asset that they (i) own or anticipate owning or (ii) lease or anticipate leasing as part of their wider efforts to meet their obligations to purchase or sell physical energy commodities and, where applicable, optimize their own production and processing operations. Accordingly, Chevron requests that the Commission consider the instant request for clarification in this context, which is materially different (and clearly distinguishable) from when the Commission last addressed this issue in the December 2013 Release.

[18] This issue was first raised in Request No. 7, Scenario 2 of the BFH Petition filed by The Working Group of Commercial Energy Firms. *See* PL NOPR at 11,611.

[19] PL NOPR at 11,612.

Accordingly, Chevron requests that the Commission clarify that hedges of underlying physical transactions that utilize CMA pricing structures may fall within the Enumerated BFH for Anticipated Merchandising set forth in Appendix A, paragraph (a)(11) or other Enumerated BFHs identified by the Commission.

(iii). Transactions Designed to Lock Basis Differentials Associated with Unpriced Purchase and Sale Commitments.

As a commercial energy firm, Chevron uses commodity derivatives to manage price risk associated with purchase and sales of physical commodities, including situations in which it has entered into a purchase (or sales) transactions before it has arranged an off-setting sales (or purchase) transaction. Often such purchase and sales transactions can have a timing mismatch as they are not executed simultaneously. Rather, such transactions are undertaken with the expectation that the commodity will be moved from the location where it was purchased ("**Purchase Location**") to a location where (i) there is a price signal incenting the sale of the commodity and (ii) Chevron has established commercial relationships with producers, refiners, or consumers ("**Sales Location**").

This particular transaction structure forms the very basis in which crude oil, refined products, LNG, and other waterborne commodities routinely move from the U.S. to Europe, Asia, Latin America, and *vice versa*. Because producers, on one hand, sell on their schedule and, on the other hand, refiners purchase on theirs, the ability to wait until there is a match of buyers and sellers ignores commercial reality. Chevron and other commercial energy firms may enter into one side of a transaction before arranging the other based on their ability to hedge and "lock in the basis" in order to ensure the economics of the transaction. A commercial energy firm would "lock in the basis" by taking a long position in a commodity derivative contract on the price index against which the commodity was purchased (at the Purchase Location) and sell a derivative on the expected sales price index (at the Sales Location) (or *vice versa*).[20]

Chevron is concerned that the PL NOPR fails to recognize Enumerated BFH status for this critically important hedging practice in global energy markets and requests that the Commission clarify that hedges of transactions designed to lock in basis differentials associated with unpriced purchase and sale commitments fall within the Enumerated BFH for Anticipated Merchandising set forth in Appendix A, paragraph (a)(11) of proposed Part 150.

Forcing commercial energy firms to seek Non-Enumerated BFHs for each of the industry-standard and commonly-utilized anticipated merchandising hedges described above will have the unintended consequence of overwhelming the Exchanges and Commission with applications for such Non-Enumerated BFH exemptions. Worse still, such action could have a chilling effect on commercial hedging activities as firms may need to curtail such practices while waiting for the Non-Enumerated BFH application process to reach a conclusion (and one for which there is critical uncertainty in the outcome). Ongoing uncertainty with respect to the timely (or ultimate) approval of Non-Enumerated BFHs for hedges of storage, CMA price hedges, and hedges of transactions designed to lock in basis differentials associated with unpriced physical purchase or sale commitments would force commercial energy firms to price in such risk into the underlying physical transaction. This would result in (i) a higher volatility in prices for energy commodities and (ii) the risk of such physical market transactions potentially not occurring.

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[20] It is possible that the commercial energy firm could enter into an agreement to sell the cargo to a third-party buyer while the cargo is in transit between the Purchase Location and the Sales Location. In this instance, the cargo will be sold to the buyer on a delivered (*i.e.* DAP) basis at the discharge port in the Sales Location. The pricing period for the cargo will be the three calendar days following the tendering of a Notice of Readiness by the delivering vessel at the discharge port. Due to the timing associated with the arrival of the vessel at the discharge port (and the related tendering of the Notice of Readiness), the pricing period overlaps in part with the spot month of the derivative used to lock the sales price at the Sales Location. As a result, the commercial energy firm will continue to hold this short derivatives position as a BFH during the spot month and ratably lift the hedge as the cargo prices.

e. The Five Day Rule.

(i) The Commission Should Adopt an Outright Prohibition on the Application of the Final Rule to Physically-Settled Referenced Contracts for Energy Contracts.

Chevron supports the Commission's preliminary determination to remove the Five Day Rule from the proposed regulatory framework for federal speculative position limits.[21] Further, it appreciates and supports the proposed delegation of authority pursuant to proposed Regulation 150.5(a)(2)(ii)(4)(D) allowing the Exchanges to use their discretion to impose the Five Day Rule or other measures intended to ensure the fair, orderly, and efficient expiry of spot-month, physically-settled Referenced Contracts. However, Chevron requests that any final rule issued in this proceeding expressly clarify that the Five Day Rule does not apply to markets for energy commodity derivatives.

The restrictions against holding a physically-settled Referenced Contract as a BFH into the spot month is a carryover from the Commission's historic Part 150 regulations, which apply to legacy agricultural futures contracts. Such a restriction is neither appropriate nor justified given the unique operational characteristics of energy markets. Unlike markets for agricultural futures, physically-settled Referenced Contracts for energy commodities do not trade into the delivery month. Rather, these contracts cease trading days before the delivery month begins. As an example, for the NYMEX CL contract, market participants are required to EFP out of a position the day after expiry or they go to physical delivery. As the FCMs are ultimately responsible for the physical delivery of their clients, the operational risk is virtually nonexistent. Consequently, the risk that a party could be called upon during the spot period to fulfill a delivery obligation akin to that in agricultural futures markets when it is not commercially prepared to do so operationally does not exist.

Furthermore, there is no apparent economic justification for forcing participants in energy markets to exit the contract that provides the best hedging tool into a different contract month or into a cash-settled Referenced Contracts. Accordingly, there is no rational basis for applying the Five Day Rule in markets for energy commodity derivatives whether at the federal level or as part of Exchange-set limits.[22]

(ii). The Waiver Guidance Set Forth in Appendix B, Paragraph (b) Should Only Apply to Physically-Settled Referenced Contracts Expressly Designated by an Exchange as Subject to the Five Day Rule.

Should the Commission decline to include in a final rule an express prohibition on the application of the Five Day Rule to energy commodity derivative contracts, Chevron requests that it clarify that an Exchange is not bound to apply the waiver guidance set forth in Appendix B, paragraph (b) to any physically-settled Referenced Contract that has not been expressly designated as subject to the Five Day Rule. Neither the PL NOPR nor the proposed text of the waiver guidance in Appendix B, paragraph (b) address the specific circumstances pursuant to which the Exchanges would be expected to follow such guidance

Chevron notes that paragraph (b)(3) of the waiver guidance contemplates that a commercial hedger holding the physically-settled Referenced Contract as a BFH would take that contract to physical

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[21] PL NOPR at 11,612-613.

[22] Because cash-settled contracts do not go to delivery and settle at or prior to expiry of physically-settled Referenced Contracts, if the Five Day Rule were applied to physically-settled Referenced Contracts in markets for energy commodities under federal or Exchange-set position limits, it would leave commercial energy firms fully exposed to price risk prior to actual physical delivery.

delivery.[23] If the Exchanges were expected to apply the waiver guidance to every hedge exemption involving a physically-settled Referenced Contract to which the Five Day Rule would not apply, it would harm legitimate commercial hedging activity in energy markets. Specifically, the waiver guidance would prohibit a large number of commercial energy firms from holding a physically-settled Referenced Contract as a BFH in the spot month for purposes of engaging in, among other things, (i) cross-commodity hedges in crude or product markets discussed in Section II.B.1.c, above, (ii) storage hedges in crude and natural gas markets, (iii) calendar month average price hedges, as well as harm their ability to enter into (a) EFP transactions or (b) alternative delivery procedures which generally are used when counterparties prefer not to perform under the exact terms of a futures contract, and (iv) hedges of unfilled anticipated requirements for refining and other purposes.[24]

Accordingly, any final rule adopted in this proceeding should expressly clarify that the waiver guidance set forth in Appendix B, paragraph (b) would only apply (and must only be followed) in circumstances in which an Exchange affirmatively identifies a physically-settled Referenced Contract as being subject to the Five Day Rule and waiver is expressly requested by a commercial hedger. Stated another way, if the Exchange does not expressly designate a Referenced Contract as being subject to the Five Day Rule, the Appendix B waiver guidance would not apply and need not be followed by the Exchanges. Such a clarification would not in any way preclude or otherwise restrict the Exchanges from utilizing other measures available to them to manage and ensure the fair, orderly, and efficient expiry of a spot month physically-settled Referenced Contract.

2. Referenced Contracts Subject to the Federal Position Limits.

Chevron has carefully reviewed, and continues to review, the *CFTC Staff Position Limits Work Book* ("**Workbook**")[25] in order to constructively comment on it. Through this process, Chevron has identified various issues and several questions regarding the scope and applicability of the proposed federal regime. Among other things, Chevron recommends that the *Workbook* should be restructured and include an introductory section or appendix that clearly explains the principles and rational used by Commission staff for determining which commodity derivative contracts are included in the *Workbook* and those that are not. Additional clarity and certainty are needed before the *Workbook* is adopted or otherwise formally recognized by the Commission as being an accurate and complete listing of Exchange-listed Referenced Contracts subject to federal speculative position limits.

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[23] In relevant part, paragraph (b)(3) of the proposed waiver guidance states:

> Any such designated contract market or swap execution facility may waive any such restriction, including if:
>
> . . . .
>
> (3) The person wishing to exceed federal position limits during the spot period:
>
> (A) Intends to make or take delivery during that time period;
>
> (B) Provides materials to the designated contract market or swap execution facility supporting a classification of the position as a bona fide hedging transaction or position and demonstrating facts and circumstances that would warrant holding such position in excess of limits during the spot period;
>
> (C) Demonstrates cash-market exposure in hand that is verified by the designated contract market or swap execution facility and that supports holding the position during the spot period;
>
> (D) Demonstrates that, for short positions, the delivery is feasible, meaning that the person has the ability to deliver against the short position (i.e., has inventory on hand in a deliverable location and in a condition in which the commodity can be used upon delivery); and
>
> (E) Demonstrates that, for long positions, the delivery is feasible, meaning that the person has the ability to take delivery at levels that are economically appropriate (i.e., the delivery comports with the person's demonstrated need for the commodity and the contract is the cheapest source for that commodity).

[24] *See, e.g.,* NYMEX Rule 538; IFUS Rule 4.06; CME Rules 770-79.

[25] PDF and Excel versions of the CFTC *Workbook* can be found at the following link: https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/PositionLimitsforDerivatives/index.htm.

- *Refined Products Referenced Contract Example*. In line 311, the *Workbook* includes the NYMEX Gulf Coast No.2 (Platts) Up-Down Financial Futures (UT) contract. However, the *Workbook* does not include the NYMEX Gulf Coast ULSD (Platts) Up-Down Financial Futures (LT) contract. Since both contracts refer to the NYMEX ULSD Heating Oil CRFC, it is not clear why the UT contract was identified as a Referenced Contract in the *Workbook* and why the LT contract was not included.

- *Crude Oil Referenced Contract Example*. In Line 50, the *Workbook* includes the IFUS Argus WTI Midland vs WTI Trade Month futures contract (MSV). However, the *Workbook* does not include the NYMEX WTI Midland (Argus) vs. WTI Trade Month futures contract (WTT), which is essentially a look-alike contract. It is not clear why the MSV contract is identified as Referenced Contract in the *Workbook*, but the WTT contract is not included.

- *Refined Products Referenced Contract Example*. In line 293, the *Workbook* includes NYMEX Los Angeles Jet Fuel (Platts) vs. NY Harbor ULSD Heating Oil (MQ) futures contract. However, the *Workbook* does not include IFUS LA Jet Fuel (Platts) vs Heating Oil 1st Line (LA4) futures contract. Since both contracts refer to the NY ULSD Heating Oil CRFC, it is not clear why the MQ contract was identified as a Referenced Contract in the *Workbook* and why the LA4 contract is not included. Commodity exposure on differential contracts such as these are not economically equivalent to outright exposure on a Core Referenced Futures Contract (CRFC).

The need for regulatory certainty with respect to the scope and applicability of the proposed federal regime to Referenced Contracts is paramount. For commodity derivative contracts that are not listed in the *Workbook*, market participants will need to go through the subjective process of making individual determinations about whether such contracts are subject to federal position limits. Clarification and certainty provided by the Commission will help minimize the compliance burdens imposed on market participants by the PL NOPR and help to mitigate differing interpretations across the industry about which contracts are "in" or "out" of the federal regime.

3 <u>The Commission Should Limit the Extraterritorial Reach of the Proposed Regulatory Framework for Federal Position Limits to Referenced Contracts Listed for Trading on U.S.-Based Exchanges and Swaps Subject to CEA Section 2(i)</u>.

Pursuant to proposed CFTC Regulation 150.2(h), the proposed federal position limits regime will extend to Referenced Contracts, including positions executed on, or pursuant to, the rules of a foreign boards of trade ("**FBOT**") if (i) such Referenced Contracts settle against the price of one or more contracts listed for trading on an Exchange; and (ii) the FBOT makes such Referenced Contracts available to its members or other participants located in the U.S. through "direct access"[26] to its electronic trading and order matching system. Market participants will be required to aggregate FBOT-listed Referenced Contracts with other Referenced Contract positions in the same underlying commodity to determine compliance with federal positions limits.

[26] "Direct access" means "an explicit grant of authority by [an FBOT] to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade." PL NOPR at 11,634 n.238 (citing CFTC Regulation 48.2(c)).

Specifically, in its review of the *Workbook*, Chevron has identified several contracts listed on ICE Futures Europe ("**IFEU**")[27] that are priced-linked to the enumerated energy CRFCs. Notwithstanding recognizing IFEU's status as registered FBOT with the Commission, Chevron is concerned that the extension of the proposed federal position limits regime to Referenced Contracts listed for trading on IFEU could have unintended consequences, such as (i) requiring U.S.-based market participants to comply with potentially conflicting requirements of multiple regulators (*i.e.,* the CFTC and Financial Conduct Authority) and position limits regimes (*i.e.,* CEA and MiFID II), and (ii) incentivizing foreign regulators (*i.e.,* Financial Conduct Authority) to extend their reach into CFTC jurisdictional markets. Such conflicts would likely violate the principles of international comity recognized by the Commission.[28]

As noted in its recent Cross-Border NOPR, principles of international comity counsel the government in one country to act reasonably in exercising its jurisdiction with respect to activity that takes place in another country, as statutes should be construed to ''avoid unreasonable interference with the sovereign authority of other nations.''[29] When considering, among other things, the level of a foreign jurisdiction's supervisory interests over the subject activity and the extent to which the activity takes place within the foreign territory, the Commission has strived to minimize conflicts with the laws of other jurisdictions. In this respect, the Commission has traditionally sought to implement an approach based on substituted compliance intended to mitigate burdens associated with potentially conflicting foreign laws and regulations in light of the supervisory interests of foreign regulators in entities domiciled and operating in their own jurisdictions.

Accordingly, consistent with the principles of international comity and deference to competent regulators in foreign jurisdictions, the Commission should reconsider the potential regulatory conflicts and burdens that could be imposed on market participants who transact Referenced Contracts listed on IFEU and adopt a policy designed to minimize such conflicts through a policy of substituted compliance.

4. The Commission Should Allow for the Phase-In of Applications for Exemptions from Federal Speculative Position Limits.

To ease administrative burdens, and for the sake of consistency and uniformity in the review and processing of applications for BFH exemptions from federal speculative position limits, including Non-Enumerated BFHs pursuant to proposed Regulation 150.9, Exchanges should be granted authority to accept for review and grant such applications in advance of the compliance date established by any final rule issued in this proceeding. Permitting the Exchanges to accept BFH applications in advance of the compliance date will ensure that an orderly process is in place to process such applications and would prevent a "logjam" situation that stretches or overwhelms the Exchanges' own resources resulting from a submission of applications by a large number of market participants on or just before the compliance date.

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[27] *See In the Matter of the Application of ICE Futures Europe for registration pursuant to Section 4(b)(1) of the Commodity Exchange Act and Part 48 of the Regulations of the Commodity Futures Trading Commission in order to permit direct access to its order entry and trade matching system*, Order of Registration, Commodity Futures Trading Commission (Oct. 31, 2016).

[28] *See* Notice of Proposed Rulemaking, *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 952, 957-958 (Jan. 8, 2020) ("**Cross-Border NOPR**") (addressing the principles of international comity considered by the Commission in issuing a new proposed rulemaking addressing certain swap provisions of the CEA).

[29] Cross-Border NOPR at 957.

III. CONCLUSION.

Chevron appreciates the opportunity to provide comments on the PL NOPR and requests that the Commission consider the comments set forth herein. Chevron reserves the right to supplement these comments as deemed necessary and appropriate.

If you have any questions, or if we can be of further assistance, please contact the undersigned.

Respectfully Submitted

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for
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